IN THE HIGH COURT OF GUJARAT AT AHMEDABAD.

Date of Decision : 12th March, 1996.

Criminal Appeal No.93 of 1988

For Approval and Signature

The Honourable Mr.Justice
R.R. JAIN

A N D

The Honourable Mr.Justice
H.R. SHELAT

1. Whether Reporters of Local Papers may be allowed to see the judgment?
....No

2. To be referred to the Reporter or not? ....No

3. Whether their Lordships wish to see the fair copy of judgment? ....No

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder? ....No

5. Whether it is to be circulated to the Civil Judge? ....No

Mr.M.J. Budhbhatti, Advocate, for the Appellants.

Mr.K.P. Raval, Addl. P.P., for the respondent.

Coram : R.R. JAIN &
H.R. SHELAT, JJ.

(12th March, 1996)

Oral Judgment :- (Per H.R. Shelat, J.)

Delivering the judgment and order dated 30th January, 1988, in Sessions Case No.107 of 1987, the learned Additional Sessions Judge, Nadiad, convicted the appellants of the offence under Section 302 and Section 302 read with Section 34 of the Indian Penal Code, and sentenced them to rigorous imprisonment for life and fine of Rs.2,000/- and in default, rigorous imprisonment for one year more, consequent upon which the present Appeal is filed.

2. In short, it is the case of the prosecution that the appellants and Mafatbhai Bhulabhai Parmar are brothers. Maniben is their widowed sister and is residing at Kankapura. Narsinhbhai Mahijibhai Vankar was serving as a Primary Teacher at Banejda in Borsad Taluka of Kheda District. Kamlaben is the widow of Narsinhbhai Mahijibhai Vankar. She is also serving as a teacher in Primary School at Mujkuva. She was residing at Joshikuva and on every Saturday and Sunday, she was going to Banejda, where her husband Narsinhbhai Mahijibhai Vankar was serving and residing. It is further alleged by the prosecution that Narsinhbhai Mahijibhai Vankar had cultivated illicit relations with Maniben, sister of the appellants for the last five to seven years. The appellants and their brother Mafatbhai did not like the illicit relations. They, therefore, planned to kill Narsinhbhai Mahijibhai Vankar. On 6th July, 1987, at 19.30 hours, when Narsinhbhai Mahijibhai Vankar was in the Patelvadi, of Banejda village, the appellants and Mafatbhai Bhulabhai Parmar attacked him. The appellant No.1 was armed with a scythe, while the appellant No.2 was armed with a knife. Mafatbhai Bhulabhai was armed with no weapon. During the attack, the appellants No.1 and 2 caused fatal injuries to deceased Narsinhbhai Mahijibhai Vankar. Having sustained profuse bleeding injuries, he fell on the ground. Hearing the shrieks, Kantibhai Laljibhai Vankar rushed to the scene of offence. He saw the appellants showering the blows, with the weapons they were having, on Narsinhbhai Mahijibhai,

his maternal uncle. Narsinhbhai Chhotabhai Patel and Harshadbhai Parsottambhai Patel also rushed to the scene of offence and thereafter, Zaverbhai Laljibhai Vankar and Ichchhabhai Ganeshbhai Vankar also rushed to the scene of offence. They saw the appellants giving blows on Narsinhbhai Mahijibhai Vankar. After causing fatal injuries, the appellants and their brother Mafatbhai ran away. On phone, the Police was informed and, later on, the complaint came to be lodged in the Virsad Police Station. At the conclusion of the Police investigation, the charge sheet was filed before the Court of the Judicial Magistrate, First Class, at Borsad. The case was then committed to the Court of Sessions, Kheda at Nadiad, which came to be registered as Sessions Case No.107 of 1987. At the conclusion of the hearing before the then learned Additional Sessions Judge at Nadiad, the case culminated into the conviction and sentence aforesaid, while Mafatbhai, the third accused, came to be acquitted. It is against that order, the present appeal has been preferred.

3. Mr.Budhbhatti, learned Advocate representing the appellants, assailed the judgment and order on few grounds and submitted that the learned Judge below was not right in appreciating the evidence on record and reaching the conclusions against the appellants. It was contended that the incident happened at 7.30 P.M. The witnesses could not have seen the incident as it was dark. No doubt, the incident has happened at 7.30 PM. But the evidence of Kantilal Laljibhai Vankar (Exhibit 7) and Zaverbhai Laljibhai Vankar (Exhibit 18), has been lost sight of by the learned Advocate. True that Bharatbhai Rambhai (Exhibit 25) and Bhailalbhai Chhotabhai (Exhibit 34) have made the attempt to support the case of the appellants, either making the statement that electric energy was not available upto 11.30 P.M. or for the whole of the night; but, Kantilal Laljibhai Vankar and Zaverbhai Laljibhai Vankar have made it clear that the electricity was available, it was not withheld and they could see the incident as there was street light. Their say is justified. It would be better if we turn to the map (Exhibit 20) got prepared by the Prosecution. In that map, three street light poles are shown near the place of the offence. When the electric energy was not withdrawn, naturally, the witnesses must have seen the incident with the street light. The inquest panchnama (Exhibit 10) was drawn between 9.30 P.M. and 10.30 P.M. and Panchnama (Exhibit 26) of the scene of offence was drawn between 10.45 P.M. and 11.30 P.M. supporting about availability of light. It seems Bharatbhai and Bhailalbhai have unjustly sided the

appellants, the wrongdoers. The contention, therefore, does not gain the ground to stand upon.

4. It was next submitted that there was no possibility of causing the injuries the Doctor (Exhibit 17) could note at the time of post mortem because the weapons alleged to have been held by the appellants were not sharp edged on both the sides. While performing the post mortem, the Doctor could see both the edges of the wounds sharp and clear cut. It seems the evidence of the doctor is misread in isolation. He has made it clear that after the blade of the weapon enters deep into the body, the injuries he noted were possible even with the weapons the appellants were having. When the Doctor has also opined about the possibility of the injuries with the weapons the respondents were having, the contention, that the injuries that were noted by the Doctor could not have been caused by those weapons, falls flat.

5. Kantibhai Laljibhai Vankar (Exhibit 7), and Zaverbhai Laljibhai Vankar (Exhibit 18) are related to the deceased. It was, therefore, contended that when the prosecution withheld independent evidence and preferred to have the evidence of relatives or neighbours, the case of the prosecution might be viewed with suspicion and benefit thereof might be given to the appellants. In our view, if the independent witnesses have seen the incident and they are available, certainly the Prosecution has to examine the independent witnesses. But, if the independent witnesses have not seen the incident or their presence cannot be secured before the Court, in that case, the duty of the Court is to examine the evidence on record with meticulous care and finicky details,s and if the evidence is found free from doubt, unimpeachable, convincing and credible, certainly, the Court can act upon the same and reach to the conclusion that is logically possible even if the available evidence is of a relative or of a neighbour or of a person of the same group. However, in this case, other side of the coin comes to surface. It may be stated that many witnesses, who can be termed `independent', have been examined and they are Harshadbhai Parshottambhai Patel (Exhibit 21), Ashabhai Mahijibai (Exhibit 22), Motibhai Pasabhai (Exhibit 23), Ichchhabhai Ganeshbhai Vankar (Exhibit 24), Mangalbhai Punambhai (Exhibit 27) and Bhailalbhai Chhotabhai (Exhibit 34), but they have not supported the case of the prosecution wholly or partly and, therefore, they are declared hostile. Their evidence reveals the tendency of the people not to side the truth and the victim but to support the wrong doer or to run with the hare and hunt with the hounds, which may be due to fear

to future safety, allurement, intimidation, dilemma, inducement and the like, and leave the victim in the lurch. Such tendency or apathy of the independent witnesses cannot be overlooked because often they come forward with cross-cutting say. Keeping such infelicity of the Prosecution in mind, the evidence has to be viewed. To put it differently, if the relatives, neighbours or the persons of the same group have appeared before the Court and deposed, their testimony cannot be discarded simply on the ground of relationship, neighbourhood or one's their affiliation to the same group, but the same has to be weighed with extra care, and if, after scrutinising with care, the evidence of relatives and the neighbours is found free from doubt and appealing to the conscience of the Court, certainly, the same can be relied upon and the conclusion that is logically possible can be drawn. In this case, above stated independent witnesses have not supported the case of the prosecution for one or another reason, or they have tried to run with the hare and hunt with the hounds, and, therefore, we have to weigh the evidence of Kantilal Laljibhai and Zaverbhai Laljibhai with extra care and caution. We have gone through the evidence of both the witnesses with meticulous care and finicky details, and we do not find anything wrong, which would support the defence and would impair the case of the Prosecution. As we find no infirmity, it appears that they have stated the truth, and their evidence leaves no room for doubt; On the contrary, when the same inspires confidence and that being credible and convincing, the learned Judge below was perfectly right in placing a reliance on the evidence of these two witnesses and reach to the conclusion that the Prosecution established the charge beyond reasonable doubt against the appellants. The contention, that the case of the Prosecution must fall flat as there is no evidence of the independent witnesses, cannot, therefore, gain a ground to stand upon.

6. Here, in this case, the learned Judge below, appreciating the evidence on record, found that the Prosecution failed to establish the charge against Mafatbhai, the third accused, and he acquitted him with which he was charged. It was, therefore, contended that here is the Prosecution, who involves even innocent persons. When that is so, the involvement of appellants might equally be held dubious and they might be acquitted, reversing the judgment and order of the lower court. If more than one accused are chargesheeted and tried for the offence and considering the evidence on record, if one or more of them are found not guilty, one

cannot jump to the conclusion that others, who are found guilty, are wrongly held guilty. For want of necessary evidence or the evidence falling short, some may be acquitted and those against whom, there is credible and convincing evidence would be convicted. It may be that owing to misconception, or bona fide mistaken impression, or illusion, those named as accused would get acquitted. In some cases, acquittal of one or some of the accused may be for many other reasons than fabrication of whole of the story or false involvement. Sometimes one or few are erroneously acquitted. It would not, therefore, be just and proper to jump to the conclusion that when one or few out of all accused are acquitted, the whole of the Prosecution case even against the convicted accused is false and fabricated. The principle "falsus in uno falsus in omnibus" is not applicable to the criminal cases. In this case, the cogent and convincing evidence of Zaverbhai Laljibhai as well as Kantilal Laljibhai, in clear terms, supports the case of the Prosecution against the present appellants and when according to them, Mafatbhai played no role and no sufficient evidence is available on record, Mafatbhai has been rightly acquitted and the appellants, against whom sufficient evidence has been brought, are rightly convicted. The contention that when Mafatbhai is acquitted, the whole case of the Prosecution falls flat, does not gain a ground to stand upon. No other contention was raised by either of the parties.

7. For the aforesaid reasons, the learned Judge has, in our view, made no mistake. The appreciation of the evidence made and the conclusions drawn being quite just and consistent with law, the conviction and sentence are required to be maintained. The Appeal is, therefore, devoid of merits and deserves to be dismissed. In the result, the Appeal is hereby dismissed. The judgment and order of the lower court, recording conviction and sentence against the appellants, are maintained.

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